



Cities and Local Government Devolution Act 2016

2016 CHAPTER 1

Combined and local authorities: governance, constitution and functions etc

18 **Devolving health service functions**

- (1) Regulations under section 16 of this Act or an order under section 105A of the Local Democracy, Economic Development and Construction Act 2009 (transfer of public authority functions to combined authorities) (“the 2009 Act”)—
 - (a) must not transfer any of the Secretary of State’s core duties in relation to the health service,
 - (b) must not transfer health service regulatory functions vested in national bodies responsible for such functions, and
 - (c) must, if transferring functions relating to the health service to a local authority or a combined authority, make provision about the standards and duties to be placed on that authority having regard to the national service standards and the national information and accountability obligations placed on the authority responsible for the functions being transferred.
- (2) For the purposes of subsection (1)(a), “the Secretary of State’s core duties in relation to the health service” means the duties of the Secretary of State under—
 - (a) sections 1 to 1G of the National Health Service Act 2006 (“the NHS Act 2006”) (duty to promote comprehensive health service etc.),
 - (b) sections 6A to 6BB of that Act (duties regarding the reimbursement of costs of services provided in another EEA state),
 - (c) section 12E of that Act (duty as respects variation in provision of health services),
 - (d) sections 13A, 13B, 13U and 223B of that Act (duties regarding mandate to, and annual report and funding of, the NHS Commissioning Board),
 - (e) section 247C of that Act (duty to keep health service functions under review),
 - (f) section 247D of that Act (duty to publish annual report on performance of the health service in England),

Status: This is the original version (as it was originally enacted).

- (g) section 258 of that Act (duty regarding the availability of facilities for university clinical teaching and research), and
- (h) sections 3 to 6 of the Health Act 2009 (duties in relation to the NHS Constitution and the Handbook to it),

in so far as those duties would (apart from subsection (1)(a)) be transferable by regulations under section 16 or an order under section 105A of the 2009 Act.

- (3) For the purposes of subsection (1)(b)—
 - (a) “health service regulatory function” means a function in relation to the health service which is a regulatory function within the meaning given by section 32 of the Legislative and Regulatory Reform Act 2006,
 - (b) the functions of the National Health Service Commissioning Board under Chapter A2 of Part 2 of the NHTSA 2006 (clinical commissioning groups) are to be treated as “health service regulatory functions” in so far as they do not fall within the definition in paragraph (a), and
 - (c) functions exercisable by a body by virtue of directions given under section 7 of the NHTSA 2006 (functions of Special Health Authorities) are not “vested in” that body.
- (4) But subsection (1)(b) does not prevent the transfer of functions of the National Health Service Commissioning Board which—
 - (a) arise from arrangements under section 1H(3)(a) of the NHTSA 2006 (provision of services for the purpose of the health service), and
 - (b) relate to those providing services under those arrangements.
- (5) For the purposes of subsection (1)(c), “national service standards” means the standards contained in any of the following—
 - (a) the NHS Constitution (within the meaning of Chapter 1 of Part 1 of the Health Act 2009);
 - (b) the standing rules under section 6E of the NHTSA 2006 (regulations as to the exercise of functions by the NHS Commissioning Board or clinical commissioning groups);
 - (c) the terms as to service delivery required by regulations or directions under the NHTSA 2006 for contracts or other arrangements for the provision of primary medical services, primary dental services, primary ophthalmic services or pharmaceutical services under Part 4, 5, 6 or 7 of that Act;
 - (d) the recommendations or guidance of the National Institute for Health and Care Excellence made or given pursuant to regulations under section 237 of the Health and Social Care Act 2012;
 - (e) the quality standards prepared by that Institute under section 234 of that Act;
 - (f) the guidance published under section 14Z8 of the NHTSA 2006 (guidance on commissioning by the NHS Commissioning Board);

and such standards are “placed on” a body if the body is required to have regard to or comply with them.
- (6) For the purposes of subsection (1)(c)—
 - (a) “national information obligations” means duties regarding the obtaining, retention, use or disclosure of information, and
 - (b) “national accountability obligations” means duties (for example, those to keep accounts or records, or to provide or publish reports, plans or other

information) which enable the management of a body, or the way in which functions are discharged, to be examined, inspected, reviewed or studied.

- (7) For the purposes of this section, a function is transferred by regulations under section 16 or by an order under section 105A of the 2009 Act, if—
- (a) provision is made under subsection (1)(a) of the section in question for the function to be the function of a local authority or a combined authority, or
 - (b) provision is made under subsection (1)(b) of that section for a function corresponding to the function to be conferred on a local authority or a combined authority.
- (8) Nothing in this section prevents the conferral on a local authority or a combined authority of duties to have regard to, or to promote or secure, the matters mentioned in sections 1 to 1F of the NHSA 2006 when exercising a function transferred to it by regulations under section 16, or by an order under section 105A of the 2009 Act.
- (9) In this section, “the health service” has the meaning given by section 275(1) of the NHSA 2006.